

# Senate Study Bill 3085 - Introduced

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON COMMERCE BILL BY  
CHAIRPERSON McCOY)

## A BILL FOR

1 An Act relating to consumer lending transactions by modifying  
2 provisions applicable to certain loan charges and increasing  
3 designated monetary limits specified in the consumer credit  
4 code.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535.2, subsection 2, paragraph a,  
2 subparagraph (5), Code 2014, is amended to read as follows:

3 (5) A person borrowing money or obtaining credit for  
4 business or agricultural purposes, or a person borrowing money  
5 or obtaining credit ~~in an amount which exceeds twenty-five~~  
6 ~~thousand dollars~~ for personal, family, or household purposes,  
7 unless the rate of interest is otherwise stated or regulated  
8 for those loans subject to chapters 536, 536A, and 537. As  
9 used in this paragraph, "*agricultural purpose*" means as defined  
10 in section 535.13, and "*business purpose*" includes but is not  
11 limited to a commercial, service, or industrial enterprise  
12 carried on for profit and an investment activity.

13 Sec. 2. Section 535.8, subsection 1, Code 2014, is amended  
14 by adding the following new paragraph:

15 NEW PARAGRAPH. c. "*Points and fees*" means the fees and  
16 charges that are included in the definition of points and fees  
17 in 12 C.F.R. §1026.32(b)(1).

18 Sec. 3. Section 535.8, Code 2014, is amended by adding the  
19 following new subsections:

20 NEW SUBSECTION. 1A. If a lender makes a loan in which  
21 the points and fees the borrower is charged by all lenders in  
22 connection with the loan does not exceed the amounts specified  
23 in 12 C.F.R. §1026.43(e)(3), the loan shall not be subject to  
24 the provisions of subsection 2, paragraphs "a", "b", and "d", or  
25 subsection 3.

26 NEW SUBSECTION. 1B. This section shall not be construed to  
27 change the prohibition against the sale of title insurance or  
28 sale of insurance against loss or damage by reason of defective  
29 title or encumbrances as provided in section 515.48, subsection  
30 10.

31 Sec. 4. Section 535.8, subsection 2, paragraph b,  
32 subparagraph (4), Code 2014, is amended by striking the  
33 subparagraph.

34 Sec. 5. Section 535.8, subsection 6, Code 2014, is amended  
35 to read as follows:

1     6. ~~a. The provisions of this section shall not apply to~~  
2 ~~any loan which is subject to the provisions of section 636.46,~~  
3 ~~nor shall it apply to origination fees, administrative fees,~~  
4 ~~commitment fees or similar charges paid by one lender to~~  
5 ~~another lender if these fees are not ultimately paid either~~  
6 ~~directly or indirectly by the borrower who occupies or will~~  
7 ~~occupy the dwelling or by the seller of the dwelling.~~

8     ~~b.~~ A lender shall not use an appraisal for any purpose  
9 in connection with making a loan under this section if the  
10 appraisal is performed by a person who is employed by or  
11 affiliated with any person receiving a commission or fee  
12 from the seller of the property. If a lender violates this  
13 ~~paragraph subsection~~ the borrower is entitled to recover  
14 any actual damages plus the costs paid by the borrower,  
15 plus attorney fees incurred in an action necessary to effect  
16 recovery.

17     Sec. 6. Section 535.10, subsections 2 and 3, Code 2014, are  
18 amended to read as follows:

19     2. ~~Except as provided in this section, a~~ A home equity line  
20 of credit is not subject to chapter 537. ~~However, sections~~  
21 ~~537.2307, 537.2402, and 537.2510 do not apply.~~

22     3. a. (1) A lender ~~may collect in connection with~~  
23 ~~establishing or renewing a home equity line of credit the costs~~  
24 ~~listed in section 535.8, subsection 2, paragraph "b", charges~~  
25 ~~for insurance as described in section 537.2501, subsection 2,~~  
26 ~~and a loan processing fee as agreed between the borrower and~~  
27 ~~the lender, and annually shall comply with the provisions of~~  
28 section 535.8.

29     (2) A lender may collect an annual account maintenance fee  
30 of not more than fifteen dollars.

31     (3) Fees collected under this subsection shall be  
32 disregarded for purposes of determining the maximum charge  
33 permitted by subsection 4.

34     b. The parties to a home equity line of credit ~~which is~~  
35 ~~not a consumer credit transaction, as defined in section~~

1 ~~537.1301~~, may contract for a delinquency charge under terms no  
2 more favorable than those permitted for open-end credit under  
3 section 537.2502.

4 Sec. 7. Section 535.10, subsection 5, Code 2014, is amended  
5 to read as follows:

6 5. Real estate ~~which~~ that is the consumer's principal  
7 dwelling shall not be subject to foreclosure when the balance  
8 secured is ~~two~~ five thousand dollars or less.

9 Sec. 8. Section 536A.23, subsection 1, paragraph a,  
10 subparagraph (3), Code 2014, is amended by striking the  
11 subparagraph.

12 Sec. 9. Section 537.1301, subsection 13, paragraph a,  
13 subparagraph (5), Code 2014, is amended to read as follows:

14 (5) With respect to a sale of goods or services, the amount  
15 financed does not exceed ~~twenty-five thousand dollars~~ the  
16 threshold amount.

17 Sec. 10. Section 537.1301, subsection 14, paragraph a,  
18 subparagraph (4), Code 2014, is amended to read as follows:

19 (4) The amount payable under the lease does not exceed  
20 ~~twenty-five thousand dollars~~ the threshold amount.

21 Sec. 11. Section 537.1301, subsection 15, paragraph a,  
22 subparagraph (5), Code 2014, is amended to read as follows:

23 (5) The amount financed does not exceed ~~twenty-five~~  
24 ~~thousand dollars~~ the threshold amount.

25 Sec. 12. Section 537.1301, subsection 15, paragraph b,  
26 subparagraph (2), Code 2014, is amended to read as follows:

27 (2) A debt which is secured by a ~~first~~ lien on real property  
28 ~~and which is incurred primarily for the purpose of acquiring~~  
29 ~~that real property, or refinancing a contract for deed to that~~  
30 ~~real property, or constructing on that real property a building~~  
31 ~~containing one or more dwelling units~~.

32 Sec. 13. Section 537.1301, subsection 29, Code 2014, is  
33 amended by striking the subsection.

34 Sec. 14. Section 537.1301, Code 2014, is amended by adding  
35 the following new subsection:

1     NEW SUBSECTION.   46.   `*Threshold amount*` means the threshold  
2 amount, as determined by 12 C.F.R. §226.3(b), in effect during  
3 the period the consumer credit transaction was entered into.

4     Sec. 15.   Section 537.1303, subsection 1, Code 2014, is  
5 amended by striking the subsection.

6     Sec. 16.   Section 537.2307, Code 2014, is amended to read as  
7 follows:

8     **537.2307   Restrictions on interest in land as security.**

9     With respect to a supervised loan in which the rate of  
10 finance charge is in excess of fifteen percent computed  
11 according to the actuarial method, and the amount financed is  
12 ~~two~~ five thousand dollars or less, a lender may not contract  
13 for a security interest in real property used as a residence  
14 for the consumer or the consumer's dependents. A security  
15 interest taken in violation of this section is void.

16    Sec. 17.   Section 537.2401, subsection 1, Code 2014, is  
17 amended to read as follows:

18    1.   Except as provided with respect to a finance charge for  
19 loans pursuant to open-end credit under section 537.2402 and  
20 loans secured by a certificate of title of a motor vehicle  
21 under section 537.2403, a lender may contract for and receive  
22 a finance charge not exceeding the maximum charge permitted  
23 by the laws of this state or of the United States for similar  
24 lenders, and, in addition, with respect to a consumer loan,  
25 a supervised financial organization ~~or a mortgage lender~~ may  
26 contract for and receive a finance charge, calculated according  
27 to the actuarial method, not exceeding twenty-one percent per  
28 year on the unpaid balance of the amount financed. Except as  
29 provided in section 537.2403, this subsection does not prohibit  
30 a lender from contracting for and receiving a finance charge  
31 exceeding twenty-one percent per year on the unpaid balance of  
32 the amount financed on consumer loans if authorized by other  
33 provisions of the law.

34    Sec. 18.   Section 537.2501, subsection 1, paragraph e, Code  
35 2014, is amended by striking the paragraph.

1     Sec. 19.   Section 537.3102, Code 2014, is amended to read as  
2 follows:

3      537.3102    Scope.

4 Part 2 applies to disclosure with respect to consumer credit  
5 transactions, other than consumer rental purchase agreements,  
6 and the provision in section 537.3201 applies to a sale of an  
7 interest in land ~~or a loan secured by an interest in land,~~  
8 without regard to the rate of finance charge, if the sale ~~or~~  
9 ~~loan~~ is otherwise a consumer credit sale ~~or consumer loan~~.  
10 Parts 3 and 4 apply, respectively, to disclosure, limitations  
11 on agreements and practices, and limitations on consumer's  
12 liability with respect to certain consumer credit transactions.  
13 Part 5 applies to home solicitation sales. Part 6 applies to  
14 consumer rental purchase agreements.

15      Sec. 20. Section 537.3308, subsection 2, paragraph e, Code  
16 2014, is amended by striking the paragraph.

17       Sec. 21. Section 537.6102, subsection 3, Code 2014, is  
18 amended to read as follows:

3. Enter into or modify a sale of an interest in land ~~or a~~  
~~loan secured by an interest in land~~, if, but for the rate of the  
finance charge, the sale, ~~loan~~ or modification would involve  
a consumer credit sale ~~or consumer loan~~, but applies only for  
the purpose of authorizing the administrator to enforce the  
provisions on compliance with the Truth in Lending Act.

| 25 | EXPLANATION |
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26 The inclusion of this explanation does not constitute agreement with  
27 the explanation's substance by the members of the general assembly.

28       This bill makes changes related to consumer lending  
29 transactions by modifying provisions applicable to residential  
30 real estate loan charges and monetary limits specified in the  
31 consumer credit code.

32 Code section 535.2 provides that a person borrowing money  
33 or obtaining credit in an amount which exceeds \$25,000 for  
34 personal, family, or household purposes may agree to the  
35 payment of any mutually agreeable rate of interest. The bill

1 removes the \$25,000 limitation and provides that a person  
2 borrowing money or obtaining credit of any amount for personal,  
3 family, or household purposes may mutually agree on a rate of  
4 interest, unless a rate of interest is otherwise stated or  
5 regulated for loans subject to Code chapters 536, 536A, and  
6 537, relating to regulated loans, industrial loans, and the  
7 consumer credit code, respectively.

8     The bill modifies several provisions contained in Code  
9 section 535.8, relating to loan charge limitations applicable  
10 to loans of money which are wholly or in part to be used for the  
11 purpose of purchasing real property that is a single-family or  
12 two-family dwelling occupied or to be occupied by the borrower.  
13 The bill defines "points and fees" by referencing an existing  
14 definition in the Code of Federal Regulations relating to the  
15 Truth in Lending Act. The bill provides that if a lender makes  
16 a loan in which the points and fees charged by all lenders in  
17 connection with the loan does not exceed amounts specified in a  
18 referenced section of the Code of Federal Regulations, the loan  
19 will not be subject to the monetary limits on loan origination  
20 or processing fees and broker fees, the limits on the types of  
21 permissible lender charges, and relating to payment of interest  
22 reduction fees in exchange for a lower rate of interest. The  
23 bill transfers a provision in Code section 535.8, subsection  
24 2, relating to the prohibition against the sale of title  
25 insurance or sale of insurance against loss or damage by reason  
26 of defective title or encumbrances to Code section 535.8, new  
27 subsection 1B.

28     The bill deletes a provision in Code section 535.8 that  
29 exempted certain federally secured loans and certain fees and  
30 charges from the provisions of Code section 535.8.

31     The bill makes Code chapter 537, the consumer credit code,  
32 inapplicable to home equity lines of credit, and requires  
33 lenders of home equity lines of credit to comply with the loan  
34 charge limitation provisions of Code section 535.8. Also with  
35 reference to home equity lines of credit, the bill increases

1 the dollar amount below which real estate that is a consumer's  
2 principal dwelling shall not be subject to foreclosure from  
3 \$2,000 to \$5,000.

4 The bill increases monetary limits applicable to certain  
5 consumer credit transactions specified in Code chapter 537.  
6 Currently, the definitions of consumer credit sale, consumer  
7 lease, and consumer loan provide that the amount financed or  
8 payable shall not exceed \$25,000. The bill deletes references  
9 to this monetary amount, and provides instead that the amount  
10 financed or payable shall not exceed a "threshold amount".  
11 The term "threshold amount" is defined in the bill as the  
12 applicable threshold amount in effect during the period a  
13 consumer credit transaction was entered into, as determined  
14 pursuant to a provision of the federal Truth in Lending Act  
15 relating to the calculation of a threshold amount in connection  
16 with extensions of credit which are exempt from regulation  
17 under the federal Act.

18 Currently, the definition of "consumer loan" in Code chapter  
19 537 does not include a debt that is secured by a first lien on  
20 real property and that is incurred primarily for the purpose of  
21 acquiring that real property or refinancing a contract for deed  
22 to that real property or constructing on that real property  
23 a building containing one or more dwelling units. The bill  
24 modifies this provision to state that a consumer loan does not  
25 include a debt that is secured by a lien on real property. The  
26 bill also deletes a definition of "mortgage lender" in Code  
27 chapter 537 and makes conforming changes.

28 Currently, with respect to a supervised loan in which the  
29 rate of finance charge is in excess of 15 percent, computed  
30 according to the actuarial method, and the amount financed  
31 is \$2,000 or less, a lender may not contract for a security  
32 interest in real property used as a residence by the consumer  
33 or the consumer's dependents. The bill increases the amount  
34 financed to \$5,000 or less.

35 The bill amends Code section 537.2501 to delete a list of



1 closing costs authorized for imposition with respect to debts  
2 secured by an interest in land and makes a corresponding change  
3 to Code section 537.1303. The bill removes references to loans  
4 or consumer loans from provisions of Code chapter 537 relating  
5 to required disclosures to consumers and relating to the powers  
6 of the attorney general or the attorney general's designee  
7 acting as an administrator.

8 Code section 537.3308, relating to balloon payments,  
9 provides that if any scheduled payment of a consumer credit  
10 transaction is more than twice as large as the average of  
11 earlier scheduled payments, the consumer has the right to  
12 refinance the amount of that payment at the time it is due  
13 without penalty, and the terms of the refinancing shall be no  
14 less favorable to the consumer than the terms of the original  
15 transaction. Currently, this provision does not apply to a  
16 consumer loan in which the amount financed exceeds \$5,000 and  
17 is secured by an interest in land. The bill provides that the  
18 limitation on the amount of a balloon payment applies to such  
19 loans.